

Code of Massachusetts Regulations

Title 651: Department of Elder Affairs

Chapter 4.00: The State Funded Nutrition Program for Elderly Persons

4.01: Scope and Purpose

These rules are promulgated pursuant to ~~M.G.L. c. 30A § 3 in accordance with the authority granted by M.G.L. c. 19A § 6, and St. 1979 c. 393 § 2 which required to govern the Department's to assume~~ administration of the ~~so-called Private Vendor Portion of the State funded School Lunch Program for Elderly Persons effective January 1, 1980. This program is to be administered through existing Nutrition Projects funded under Title IIIC of the Older Americans Act of 1965, as amended, in order to maximize federal reimbursements for meals served hereunder. Except as specifically stated, these regulations shall not govern federally funded nutrition services provided by Nutrition Project grantees of the Department funded under Title III C.~~

4.02: Definitions

The following words and phrases whenever used in 651 CMR 4.00, unless the context clearly requires otherwise, shall have the following meanings:

A.A.A. Area Agency on Aging.

Central Production Center A central kitchen which prepares and packages meals to be transported to serving centers.

Congregate Meal A meal provided in a congregate setting to Eligible Elders which meets the requirements set by D.E.A.

D.E.A. The Massachusetts Department of Elder Affairs.

D.R.I. The Dietary Reference Intake, which is a system of nutrition recommendations from the Institute of Medicine (IOM) of the U.S. National Academy of Sciences. The DRI system is used by both the United States and Canada and is intended for the general public and health professionals.

Eligible Elder An individual aged 60 or older and his/her spouse, regardless of age.

Fiscal Year A period of 12 calendar months beginning with July 1st in any calendar year and ending with June 30th of the following year.

Food Service Management Company ("FSMC") is a commercial enterprise or a non-profit organization which is, or may be, contracted with the AAA or Nutrition Projects to manage any aspect of elderly nutrition program food services.

Funded Costs Those expenses incurred by the ~~Sponsoring Agency~~ Nutrition Project which are approved by D.E.A. pursuant to agreement and the existing program

appropriation available which are in excess of the participant contribution for each Congregate and Home Delivered Meal prepared and served.

G.A.O. The United States General Accounting Office.

Home Delivered Meal A meal which is furnished by a ~~Sponsoring Agency~~ Nutrition Project to an Eligible Elder who is homebound by reason of illness, incapacitating disability, or isolation, which meal meets the requirements set by D.E.A.

H.H.S. The United States Department of Health and Human Services.

~~Labor Personnel costs incurred by the Sponsoring Agency in the preparation of meals at the Central Production Center.~~

Meal Site The locations where each Nutrition Program ~~Sponsoring Agency~~ serves Congregate Meals.

~~N.E.S.F.S. The Bureau of Nutrition Education and School Food Services of the Massachusetts Department of Elementary and Secondary Education.~~

Nutrition Project An organization which is the recipient of a grant from the appropriate Area Agency on Aging to provide nutrition services or which has the administrative authority under contract to provide nutrition services under Title III-C to a Project Area, and which participates in this Program.

Nutrition Services Those federally funded services required to be provided by Nutrition Projects to Eligible Elders in accordance with Title III-C, including but not limited to Congregate Meals and Home Delivered Meals.

~~Private Vendor An organization that provides catering services.~~

~~Private Vendor Portion of the School Lunch Program The Sponsoring Agencies which, on or before December 31, 1979, operated a non-profit Congregate Meals or Home Delivered Meals Program for elders in non-school meal sites, received reimbursements of certain food and preparation costs under an agreement with N.E.S.F.S., and which contracts with D.E.A. and/or the Nutrition Project within whose Project Area it is located for operation of a meals program for Eligible Elders under this part.~~

~~Program The Private Vendor Portion of the School Lunch Program commencing on or after January 1, 1980.~~

Project Area The geographic area served by a Nutrition Project as defined by D.E.A.

~~Sponsoring Agency A private non-profit or public non-school organization or agency which, on December 31, 1979, operated a non-profit Congregate or Home Delivered Meals program for elders, received reimbursements of certain food and preparation costs~~

~~under an agreement with N.E.S.F.S., and which contracts with D.E.A. and/or the Nutrition Project within whose Project Area it is located, for operation of a Meals Program for Eligible Elders under this part; or any private non-profit or public non-school organization which enters into an agreement with D.E.A. and/or the Nutrition Project within whose Project Area it is located for the operation of a State Funded Nutrition Program.~~

~~State Funded Nutrition Program A program of Congregate Meals and/or Home Delivered Meals for Eligible Elders in the Commonwealth in which certain funded costs to Sponsoring Agencies are paid through D.E.A.~~

~~Title III-C Title III-C of the Older Americans Act of 1965, (42 USC 3030e et seq.), as amended by the Comprehensive Older Americans Act Amendments of 1978-2006~~

~~U.S.D.A. United States Department of Agriculture.~~

4.03: Administration of the Program

~~(1) On and after January 1, 1980, D.E.A. shall administer a State Funded Nutrition Program for Eligible Elders and shall, to the maximum extent feasible, incorporate those Sponsoring Agencies into the Title III-C Nutrition Services Program which were receiving State reimbursement of certain costs from N.E.S.F.S. under the so-called Private Vendor Portion of the School Lunch Program for Elderly Persons prior to January 1, 1980.~~

~~(21) Each Sponsoring Agency Nutrition Project taking part in the State Funded Nutrition Program will enter into a written agreement with D.E.A. or the Title III-C Nutrition Project within whose Project Area it is located that contracts directly with D.E.A. for the State Funds. Such agreements shall cover a Fiscal Year and may be extended for succeeding fiscal years with the approval of all parties involved. Any amendments of either party must be submitted to D.E.A. in writing for approval, and will become effective only upon the issuance of approval.~~

~~(32) All written agreements shall be on a form approved by the D.E.A.~~

~~(43) If for any reason, D.E.A. is unable to enter into or renew a written agreement with a Sponsoring Agency Nutrition Project, it may contract with another Sponsoring Agency Nutrition Project either directly or through the Area Agency on Aging (AAA). Title III-C Nutrition Project within whose Project Area it is located for the operation of the State Funded Nutrition Program in that local area.~~

4.04: D.E.A. Functions

~~(1) Pursuant to an agreement with a Nutrition Project and/or Sponsoring Agency, D.E.A. shall reimburse each Sponsoring Agency either directly or through the Title III-C~~

~~Nutrition Project within whose Project Area it is located for funded costs less donated income and/or U.S.D.A. commodity credits.~~

~~(2) Pursuant to the agreement mentioned in Section 4.04 above, D.E.A. shall monitor on a timely basis in cooperation with the appropriate Title III C Nutrition Project, the fiscal, nutritional and programmatic compliance of each Sponsoring Agency nutrition project with the provisions of 651 CMR 4.04.~~

4.05: Nutrition Project Functions

~~Pursuant to an agreement with D.E.A., each Title III C Nutrition Project shall perform the following functions:~~

~~(1) Perform fiscal functions required to pass through reimbursement to each Sponsoring Agency for Funded Costs.~~

~~(2) Monitor on a timely basis, in cooperation with D.E.A., the fiscal, nutritional and programmatic compliance of each Sponsoring Agency nutrition project with the provisions of these regulations. Results of the monitoring shall be transmitted in writing to the Sponsoring Agency and D.E.A. within 30 days after the monitoring and shall include a record of deficiencies, if any, along with the terms and conditions necessary to correct such deficiencies.~~

4.06 4.04: Nutrition Project Sponsoring Agency Functions and Requirements

~~Pursuant to the agreement with D.E.A. and/or each Nutrition Project within whose Project Area it is located, each Sponsoring Agency Nutrition Project shall agree to meet the following requirements:~~

~~(1) Congregate Meals.~~

~~(a) Each Sponsoring Agency Nutrition Project shall provide to Eligible Elders a hot or other appropriate Congregate Meal.~~

~~(b) Each Congregate Meal served shall contain a minimum of 1/3 of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences, National Research Council and shall comply with D.E.A. meal requirements stated in 651 CMR 4.075.~~

~~(c) The Sponsoring Agency Nutrition Project shall locate Meal Sites as close as possible, preferably within walking distance, to the majority of Eligible Elders, and give preference to community facilities in the selection of such sites.~~

~~(2) Home Delivered Meals.~~

(a) Each Nutrition Project shall provide a home-delivered meal to those Elders who are determined to be unable to prepare nutritionally adequate meals or attend a congregate meal site.

~~(a) Notwithstanding the requirements of 651 CMR 4.06(1), any Sponsoring Agency nutrition project which was providing only Home Delivered Meals to elders under an agreement with N.E.S.F.S. under the Private Vendor Portion of the School Lunch Program, may continue to provide Home Delivered Meals meeting the requirements of these regulations in lieu of any Congregate Meal requirements in 651 CMR 4.00 beginning January 1, 1980.~~

~~(b) Any Sponsoring Agency may provide Home Delivered Meals in addition to providing Congregate Meals to Eligible Elders.~~

~~(c) Sponsoring Agencies providing Home Delivered Meals pursuant to 651 CMR 4.06(2)(a) and (b) shall provide Eligible Elders at least one hot or other appropriate meal.~~

~~(d) Each Home Delivered Meal served shall contain a minimum of 1/3 of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Academy of Sciences--National Research Council and shall comply with D.E.A. meal requirements stated in 651 CMR 4.075.~~

~~(e) Determination of Need for Home Delivered Meals :~~

~~1. Each Sponsoring Agency which provides Home Delivered Meals shall conduct initial and subsequent periodic assessments of the Eligible Elder to determine the need for Home Delivered Meals, unless the assessment is otherwise provided for by the Nutrition Project. The determination of need shall be based on the provisions set forth in 651 CMR 4.02(9).~~

~~2. Subject to available funding, the Sponsoring Agency providing Home Delivered Meals must meet an Eligible Elder's request for Home Delivered Meals, and must continue to provide Home Delivered Meals so long as the Eligible Elder needs them.~~

~~3. If an Eligible Elder receiving Home Delivered Meals gives an informed consent, the Sponsoring Agency must bring to the attention of the Nutrition Project any condition or circumstances which place the Eligible Elder in the household in need of specialized services.~~

~~(f) Each Sponsoring Agency Nutrition Project which provides Home Delivered Meals may shall purchase such meals from a FSMC caterer or an organization, where one exists, which:~~

~~1. demonstrates a proven ability to provide Home Delivered Meals effectively and at reasonable cost; and~~

2. agrees to comply with applicable regulations under this part.

(~~dg~~) Only when there is no existing organization which meets the criteria specified in 651 CMR 4.064(2)(~~fc~~), may the Sponsoring Agency Nutrition Project furnish Home Delivered Meals directly.

(3) Each Sponsoring Agency Nutrition Project shall give each Eligible Elder who participates in the Program an opportunity to voluntarily contribute to part or all of the cost of each meal provided in compliance with the requirements set forth in 651 CMR 4.08. In implementing this provision, the Sponsoring Agency shall ~~may~~ develop a suggested contribution schedule for meals provided which takes into consideration the income ranges of older persons in the community. ~~and the Sponsoring Agency's other sources of income.~~

(4) ~~Each Sponsoring Agency desiring to participate in the program shall make written application for participation to the Nutrition Program within whose Project Area it is located. At a minimum, such applications shall provide information on each of the items listed below:~~

(a) ~~the name, location and mailing address of the Sponsoring Agency;~~

(b) ~~the name of the person authorized by the governing body of the Sponsoring Agency to enter into contractual agreements on its behalf;~~

(c) ~~the type of agency (private non profit or public non school);~~

(d) ~~the estimated average daily participation;~~

(e) ~~the beginning date of participation in the program;~~

(f) ~~the number of days that lunches will be served;~~

(g) ~~the estimated cost per lunch;~~

(h) ~~whether the Sponsoring Agency is participating in other programs of D.E.A.~~

(~~45~~) Each Sponsoring Agency Nutrition Project is encouraged to ~~shall~~ provide special menus, where feasible and appropriate, to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of the Eligible Elders served. ~~The Nutrition Project may exempt a Sponsoring Agency from this requirement only when the food or skills necessary to prepare the special meals are unavailable in the Project Area.~~

(~~65~~) Each Sponsoring Agency Nutrition Project that does not use the services of a FCMC eaterer shall maintain facilities for storing, preparing and serving food.

~~(76)~~ Each ~~Sponsoring Agency Nutrition Project~~ shall ensure that its FSMC eaterer complies ~~comply~~ with all applicable State and local health and sanitation laws and regulations in its storage, preparation and service of food.

~~(8) U.S.D.A. Donated Foods.~~

~~(a) Each Sponsoring Agency shall accept and use any U.S.D.A. donated foods made available by the Title III C Nutrition Project or directly by N.E.S.F.S. and must assure appropriate and cost effective arrangements for the transportation, storage, and use of all U.S.D.A. donated food.~~

~~(b) Each Sponsoring Agency under contract with a Title III C Nutrition Project that prepares its own meals shall purchase and prepare food of which at least 50% is produce of the United States.~~

(97) Each ~~Sponsoring Agency Nutrition Project~~ shall submit claims for reimbursement in accordance with procedures set forth by D.E.A. in an Agreement between D.E.A. and/or the Nutrition Project within whose Project Area it is located.

~~(108)~~ Each ~~Sponsoring Agency Nutrition Project~~ shall keep and maintain such records and make such reports as are required by D.E.A. for the collection and collation of fiscal and programmatic information. Such records shall include but not be limited to the following:

(a) Daily number of Congregate and Home Delivered Meals served to Eligible Elders.

(b) Program Income:

1. from donations from Eligible Elders;
2. from Federal and State reimbursements;
3. from all other sources.

(c) Program costs (supported by invoices, receipts or other evidence of expenditures):

1. for food;
2. for labor;
3. for other allowable costs.

Such records, including menus, shall be maintained for a period of three years after the end of the fiscal year to which they pertain.

(9) Upon request, each ~~Sponsoring Agency Nutrition Project~~ shall make all accounts and records pertaining to the Program available to D.E.A. ~~and the nutrition project within whose Project Area it is located~~ for audit and administrative review at any reasonable time and place. These accounts and records shall also be made available for purposes of review and audit to authorized agents or employees of H.H.S. or G.A.O., or N.E.S.F.S. at any reasonable time or place.

~~(11) Each Sponsoring Agency shall determine the status of Program participants as Eligible Elders prior to serving them.~~

4.075: Requirements for Meals

(1) General Requirement. The Congregate Meal and Home Delivered Meal offered to Eligible Elders shall ~~be a Type "A" meal which assumes a minimum of a of daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences National Research Council~~ comply with the most recent Dietary Guidelines for Americans, published by the Secretary of Agriculture and meet a minimum of 33 1/3 percent of the dietary reference intakes (DRI) established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences.

(2) Menu Preparation. Each ~~Sponsoring Agency Nutrition Project~~, or the organization with whom it contracts for the preparation of its Congregate Meals or Home Delivered Meals, shall prepare a menu adhering to the 1/3 of the daily recommended dietary allowance requirements stated in 651 CMR 4.05 ~~07~~(1) one month prior to the implementation of the menu.

(3) Food Components. A Congregate Meal or Home Delivered Meal shall contain, at a minimum, each of the following food components in the amounts indicated:

(a) Three ounces (edible portion as served) of lean meat, poultry or fish (with more emphasis on the latter two) or two ounces of cheese; or one egg; or one half cup of cooked dry beans or peas; or an equivalent quantity of any combination of the above listed foods. To be counted in meeting this requirement, these foods must be served in a main dish or in a main dish with another menu item.

(b) Two 1/2 cup servings of fruit and/or vegetables, with emphasis on Vitamin C and green and yellow leafy vegetables. Fruits should be fresh, when in season and cost permitting, or canned in water or light syrup. Vegetables should be fresh or frozen, and if canned, the sodium content should be reviewed prior to use. Full strength unsweetened vegetable and fruit juices may be counted to meet not more than 1/4 of this requirement.

(c) One slice of whole grain or enriched bread or alternate. Rice and pasta products are considered bread alternatives and not a vegetable substitute. Potatoes, however, are considered a vegetable alternative and can be used accordingly.

(d) One teaspoon butter or fortified margarine.

(e) One 1/2 cup dessert (optional if fruit or fruit juice is already present on menu). Encourage fruits for desserts and refrain from concentrated sweets.

(f) One 1/2 pint of fluid milk, preferable non or low-fat.

(g) Coffee and tea may be offered in addition to the milk and not substituted for it.

4.086: Contributions by Eligible Elders

(1) Opportunity to Contribute. Each ~~Sponsoring Agency~~ Nutrition Project shall:

(a) give each Eligible Elder who participates in the Program information about the cost of providing the Congregate or Home Delivered Meal;

(b) give each Eligible Elder who participates in the Program an opportunity to contribute to part or all of the cost of the Congregate or Home Delivered Meal provided;

(c) tell each Eligible Elder who participates in the Program that he or she may decide freely whether or not to contribute;

(d) avoid the appearance of pressure to contribute;

(e) protect the privacy of each Eligible Elder with respect to his or her contribution;

(f) have appropriate procedures in effect to safeguard and account for all participant contributions;

(g) use all contributions to increase the number of meals served under the Program.

(2) Failure to Contribute. No ~~Sponsoring Agency~~ Nutrition Project shall deny an Eligible Elder a Congregate or Home Delivered Meal because that person fails to contribute.

(3) Collection and Protection of Contributions.

(a) D.E.A. may specify general standards for the collection of contributions for Program participants in its agreements with each Nutrition Project ~~and Sponsoring Agency~~.

(b) Each ~~Sponsoring Agency~~ Nutrition Project shall deposit participant contributions in a bank as often as the amounts warrant, but no less than weekly. Each ~~Sponsoring Agency~~ Nutrition Project shall insure that proper safeguards are employed to protect cash pending deposit and personnel handling cash. ~~Bonding of all Sponsoring Agency employees handling significant cash amounts shall be required.~~

4.097: Reimbursement Procedures

(1) ~~D.E.A. shall develop a mechanism for reimbursing Sponsoring Agencies for Funded Costs either directly or through the Title III-C Nutrition Project.~~

(2) ~~Reimbursement payments shall be made by D.E.A. to Sponsoring Agencies or Title III-C Nutrition Projects. subcontracting with Sponsoring Agencies operating under an agreement made pursuant to 651 CMR 4.03, and shall be made only after the execution of such an agreement~~

4.108: Non-Discrimination and Affirmative Action Requirements

(1) Non-Discrimination in Service Delivery.

(a) ~~The Sponsoring Agency Nutrition Project~~ shall not deny Congregate Meals to an Eligible Elder or deny Home Delivered Meals to an Eligible Elder who has been determined to be in need of such meals on the basis of race, color, religion, sex, age, national origin, ancestry, physical or mental disability ~~handicap~~, or because such person is a recipient of Federal, State, or local public assistance or housing subsidy.

(b) ~~The Sponsoring Agency Nutrition Project shall reasonably accommodate participants with disabilities. use appropriate food containers and utensils for blind and handicapped participants where feasible.~~

(c) Each ~~Sponsoring Agency Nutrition Project~~ shall comply with the applicable provisions of:

1. Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.) which prohibits discrimination on the basis of race, color, or national origin;
2. Section 504 of the Rehabilitation Act of 1973 (42 USC 794) and the regulations promulgated thereunder (45 CFR Part 84) which prohibit discrimination against qualified handicapped individuals on the basis of handicap in any program or activity receiving or benefitting from Federal financial assistance and requires programs and activities when viewed in their entirety, to be readily accessible to handicapped persons;
3. The Commonwealth's Executive Order ~~143~~526, prohibiting discrimination based on ~~handicap~~disability;
4. M.G.L. c. 151B § 4(10) which prohibits discrimination in furnishing services on the grounds that an individual is a recipient of Federal, State or local public assistance or housing subsidies.

(2) Non-Discrimination In Employment.

(a) ~~The Sponsoring Agency Nutrition Project~~ shall not discriminate against any qualified employee or applicant for employment because of his or her race, color, age, national origin, ancestry, religion, or physical or mental disability ~~handicap~~.

(b) Each ~~Sponsoring Agency~~ Nutrition Project shall comply with the provisions of:

1. M.G.L. c. 151B § 4(1) which prohibits discrimination in employment on the basis of race, color, religion, sex or national origin, creed, ancestry or age;

2. D.E.A. Regulations 651 CMR 8.00, Discrimination Based on Age in Agencies and Organizations in Receipt of Funds from the Department of Elder Affairs.

3. Section 504 of the Rehabilitation Act of 1973 (29 USC 794) and the regulations promulgated pursuant thereto (45 CFR 84) which prohibit discrimination against qualified handicapped individuals on the basis of handicap and requires employers to make reasonable accommodations to known physical or mental limitations of otherwise qualified handicapped applicants or employees; and

4. The Commonwealth's Executive Order ~~143~~526 regarding non-discrimination based upon ~~handicap~~ disability.

(3) Other Applicable D.E.A. Regulations. Each ~~Sponsoring Agency~~ Nutrition Project shall comply with the D.E.A. Regulations Governing the Protection of Clients Who are Participants in Research Projects 651 CMR 7.00.

(4) Affirmative Action. Each ~~Sponsoring Agency~~ Nutrition Project with a contract with D.E.A. and the applicable Nutrition Project with a value of \$10,000 or less shall have in effect a policy of affirmative action which fulfills the applicable requirements of State Executive Order ~~116~~526. A ~~Sponsoring Agency~~ Nutrition Project with such a contract with a value of more than \$10,000 shall have in effect, maintain, and adhere to an Affirmative Action Plan which fulfills the applicable requirements of State Executive Order 116 as well as those requirements set by D.E.A.

4.419: Safety Codes and Training

Each ~~Sponsoring Agency~~ Nutrition Project shall take all steps necessary to ensure the safety of all Program participants. These steps shall include but not be limited to the following:

(1) Document that all Meal Sites are in compliance with State and local health and fire standards.

(2) Train all project personnel and volunteers in emergency procedures and choke saving procedures.

~~(3) Maintain appropriate emergency medical information on file at the site for Program participants.~~

(34) Develop appropriate health and sanitary procedures for Congregate Meals and Home Delivered Meals.